

Judge Lasnik

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
LEANDRE GAINES,
Defendant.

NO. CR20-192RSL

PLEA AGREEMENT

The United States of America, by and through Tessa M. Gorman, Acting United States Attorney for the Western District of Washington, and Ye-Ting Woo, Assistant United States Attorney for said District, Defendant Leandre Gaines, and Defendant's attorney, Jesse Cantor, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure Rule 11.

1. **The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to Count 1 of the Indictment: Felon in Possession of Firearm, in violation of Title 18, United States Code, Section 922(g).

By entering a plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering any guilty

plea, Defendant will be placed under oath. Any statement given by Defendant under oath may be used by the United States in a prosecution for perjury or false statement.

2. **Elements of the Offense.** The elements of the offense of Felon in Possession of Firearm, in violation of Title 18, United States Code, Section 922(g), as charged in Count 1 of the Indictment, to which Defendant is pleading guilty are as follows:

First, defendant knowingly possessed a firearm;

Second, the firearm had been shipped and transported in interstate and foreign commerce;

Third, the defendant knew at the time that he possessed the firearm that he had been convicted of one or more crimes punishable by imprisonment for a term exceeding one year.

3. **The Penalties.** Defendant understands that the statutory penalties applicable to the offense of Felon in Possession of Firearm, as charged in Count 1, to which Defendant is pleading guilty are as follows: A maximum term of imprisonment of up to ten years, a fine of up to \$250,000.00, a period of supervision following release from prison of up to three years, and a mandatory special assessment of \$100.00. If a probationary sentence is imposed, the probation period can be for up to five (5) years.

Defendant understands that supervised release is a period of time following imprisonment during which Defendant will be subject to certain restrictive conditions and requirements. Defendant further understands that, if supervised release is imposed and Defendant violates one or more of the conditions or requirements, Defendant could be returned to prison for all or part of the term of supervised release that was originally imposed. This could result in Defendant serving a total term of imprisonment greater than the statutory maximum stated above.

Defendant understands that as a part of any sentence, in addition to any term of imprisonment and/or fine that is imposed, the Court may order Defendant to pay restitution to any victim of the offense, as required by law.

1 Defendant further understands that the consequences of pleading guilty may
 2 include the forfeiture of certain property, either as a part of the sentence imposed by the
 3 Court, or as a result of civil judicial or administrative process.

4 Defendant agrees that any monetary penalty the Court imposes, including the
 5 special assessment, fine, costs, or restitution, is due and payable immediately and further
 6 agrees to submit a completed Financial Statement of Debtor form as requested by the
 7 United States Attorney's Office.

8 Defendant understands that, if pleading guilty to a felony drug offense, Defendant
 9 will become ineligible for certain food stamp and Social Security benefits as directed by
 10 Title 21, United States Code, Section 862a.

11 **4. Immigration Consequences.** Defendant recognizes that pleading guilty
 12 may have consequences with respect to Defendant's immigration status if Defendant is
 13 not a citizen of the United States. Under federal law, a broad range of crimes are grounds
 14 for removal, and some offenses make removal from the United States presumptively
 15 mandatory. Removal and other immigration consequences are the subject of a separate
 16 proceeding, and Defendant understands that no one, including Defendant's attorney and
 17 the Court, can predict with certainty the effect of a guilty plea on immigration status.
 18 Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any
 19 immigration consequences that Defendant's guilty plea may entail, even if the
 20 consequence is Defendant's mandatory removal from the United States.

21 **5. Rights Waived by Pleading Guilty.** Defendant understands that by
 22 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

- 23 a. The right to plead not guilty and to persist in a plea of not guilty;
- 24 b. The right to a speedy and public trial before a jury of Defendant's
 25 peers;
- 26 c. The right to the effective assistance of counsel at trial, including, if
 27 Defendant could not afford an attorney, the right to have the Court appoint one for
 28 Defendant;

1 d. The right to be presumed innocent until guilt has been established
2 beyond a reasonable doubt at trial;

3 e. The right to confront and cross-examine witnesses against Defendant
4 at trial;

5 f. The right to compel or subpoena witnesses to appear on Defendant's
6 behalf at trial;

7 g. The right to testify or to remain silent at trial, at which trial such
8 silence could not be used against Defendant; and

9 h. The right to appeal a finding of guilt or any pretrial rulings.

10 6. **United States Sentencing Guidelines.** Defendant understands and
11 acknowledges that the Court must consider the sentencing range calculated under the
12 United States Sentencing Guidelines and possible departures under the Sentencing
13 Guidelines together with the other factors set forth in Title 18, United States Code,
14 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the
15 history and characteristics of Defendant; (3) the need for the sentence to reflect the
16 seriousness of the offense, to promote respect for the law, and to provide just punishment
17 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
18 conduct; (5) the need for the sentence to protect the public from further crimes of
19 Defendant; (6) the need to provide Defendant with educational and vocational training,
20 medical care, or other correctional treatment in the most effective manner; (7) the kinds
21 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
22 avoid unwarranted sentence disparity among defendants involved in similar conduct who
23 have similar records. Accordingly, Defendant understands and acknowledges that:

24 a. The Court will determine Defendant's Sentencing Guidelines range
25 at the time of sentencing;

26 b. After consideration of the Sentencing Guidelines and the factors in
27 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
28 maximum term authorized by law;

1 c. The Court is not bound by any recommendation regarding the
 2 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
 3 range offered by the parties or the United States Probation Department, or by any
 4 stipulations or agreements between the parties in this Plea Agreement; and

5 d. Defendant may not withdraw a guilty plea solely because of the
 6 sentence imposed by the Court.

7 7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
 8 guaranteed what sentence the Court will impose.

9 8. **Statement of Facts.** The parties agree that the evidence presented at trial
 10 would support the following facts beyond a reasonable doubt. Defendant admits
 11 Defendant is guilty of the charged offense.

12 a. On March 1, 2020, Defendant Leandre Gaines possessed a .45 ACP
 13 caliber Taurus semi-automatic pistol and used this pistol an assault of another person.
 14 Specifically, between 9:30 and 10:00 p.m. on March 1, 2020, Defendant was at a sport
 15 bar, Classics, in Renton, Washington. Defendant became involved in a verbal dispute
 16 with two bar patrons, J.F. and M.R.. A bar employee was able to intervene and calmed
 17 down Defendant, who then stepped outside into the parking lot.

18 b. Shortly before 11:00 p.m., M.R. was at his vehicle and was driving
 19 out of the bar parking lot. Defendant used his .45 ACP caliber pistol and began shooting
 20 at the vehicle being driven by M.R. Defendant repeatedly fired at M.R.'s vehicle while it
 21 drove onto and along Maple Valley Highway.

22 c. Defendant then ran to an area behind the bar, climbing over a tall
 23 fence, and fell to the ground. Renton police located Defendant laying on the ground,
 24 unconscious. With the pistol on the ground near his leg. The pistol had an empty
 25 magazine, and the gun's slide was locked back. Gaines had an empty holster clipped to
 26 the front of his waistband. Officers also located eight .45 ACP casings in the parking lot
 27 in the area where Defendant was standing while shooting at M.R.'s vehicle.
 28

d. Defendant has the following prior felony convictions. Defendant knew, on March 1, 2020, that these prior convictions involved a sentence of a term of more than one year.

(i) Felon in Possession of Firearm, United States District Court, Western District of Washington, Case Number CR16-211RSL, on June 16, 2017;

(ii) Tampering with a Witness, King County Superior Court, Case Number 10-1-03190-8, on or about June 4, 2010;

e. The firearm possessed by Defendant, .45 ACP caliber Taurus semi-automatic pistol, traveled in interstate commerce, to the State of Washington.

The parties agree that the Court may consider additional facts contained in the Presentence Report (subject to standard objections by the parties) and/or that may be presented by the United States or Defendant at the time of sentencing, and that the factual statement contained herein is not intended to limit the facts that the parties may present to the Court at the time of sentencing.

9. **Sentencing Factors.** The parties agree that the following Sentencing Guidelines provisions apply to this case:

a. Base offense level 14, pursuant to Section 2K2.1(a)(6)(A); and,

b. Use of firearm in connection with another felony offense, four-level upward adjustment, pursuant to Section 2K2.1(b)(6)(B).

The parties agree they are free to present arguments regarding the applicability of all other provisions of the United States Sentencing Guidelines. Defendant understands, however, that at the time of sentencing, the Court is free to reject these stipulated adjustments, and is further free to apply additional downward or upward adjustments in determining Defendant's Sentencing Guidelines range.

10. **Acceptance of Responsibility.** At sentencing, *if* the Court concludes Defendant qualifies for a downward adjustment acceptance for acceptance of responsibility pursuant to USSG § 3E1.1(a) and Defendant's offense level is 16 or

greater, the United States will make the motion necessary to permit the Court to decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because Defendant has assisted the United States by timely notifying the United States of Defendant's intention to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

11. Government's Sentencing Recommendation Regarding Imprisonment.

The United States agrees to recommend a sentence of imprisonment within the advisory guideline range as determined by the Court. Defendant understands that this recommendation is not binding on the Court, and that the Court may reject the recommendation of the parties and may impose any term of imprisonment up to the statutory maximum penalty authorized by law. Defendant further understands that Defendant cannot withdraw a guilty plea simply because of the sentence imposed by the Court. Except as otherwise provided in this Plea Agreement, the parties are free to present arguments regarding any other aspect of sentencing.

12. Supervised Release Violation, CR16-0021RSL.

Defendant admits that he violated his conditions of supervised release in Case Number CR16-0021RSL, as follows:

Violation Number 1: Committing the crime of assault, second degree, on or about March 1, 2020, in violation of a mandatory condition of supervision; and,

Violation Number 2: Committing the crime of unlawful possession of firearm, on or about March 1, 2020, in violation of a mandatory condition of supervision.

13. Concurrent Sentencing Recommendation.

a. *United States v. Leandre Antoine Gaines*, CR16-0021RSL.

The United States agrees to recommend that the sentence imposed in the supervised release violation matter, Case Number CR16-0021RLS, run concurrent with the sentence imposed in this federal case and concurrent with the sentence imposed in King County Superior Court Cause Number 20-1-01256-KNT.

1 b. *State of Washington v. Leandre A. Gaines*, King County Superior
2 Court Cause Number 20-1-01256-KNT.

3 Defendant is charged with Assault in the Second Degree and Unlawful Possession
4 of Firearm in Cause Number 20-1-01256-KNT. The United States agrees to recommend
5 that the sentence imposed in this federal case run concurrent to the sentence imposed in
6 the King County prosecution.

7 Further, the King County Prosecuting Attorney's Office has agreed to dismiss the
8 charge of unlawful possession of firearm promptly after this Court imposes sentence in
9 this federal case.

10 Finally, the government agrees to coordinate a writ with the King County
11 Prosecutor so that Mr. Gaines can be sentenced in King County Superior Court before
12 being classified and designated by the Bureau of Prisons.

13 14. **Forfeiture.** The Defendant understands that the forfeiture of property is
14 part of the sentence that must be imposed in this case. The Defendant agrees to forfeit to
15 the United States immediately his right, title, and interest in any firearms and associated
16 ammunition involved in his commission of Felon in Possession of Firearm. All such
17 firearms and associated ammunition are forfeitable pursuant to Title 18, United States
18 Code, Section 924(d), by way of Title 28, United States Code, Section 2461(c).

19 The Defendant agrees to fully assist the United States in the forfeiture of the
20 above-described property and to take whatever steps are necessary to pass clear title to
21 the United States, including but not limited to: surrendering title and executing any
22 documents necessary to effect forfeiture; assisting in bringing any assets located outside
23 the United States within the jurisdiction of the United States; and taking whatever steps
24 are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted,
25 hidden, or otherwise made unavailable for forfeiture. The Defendant agrees not to file a
26 claim to any of the above-described property in any federal forfeiture proceeding,
27 administrative or judicial, which may be or has been initiated.

28 The United States reserves its right to proceed against any firearms and associated

1 ammunition not identified above if they were involved in the Defendant's commission of
2 Felon in Possession of Firearm.

3 15. **Abandonment of Contraband.** Defendant also agrees that, if any federal
4 law enforcement agency seized any illegal contraband that was in Defendant's direct or
5 indirect control, Defendant consents to the federal administrative disposition, official use,
6 and/or destruction of that contraband.

7 16. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
8 the United States Attorney's Office for the Western District of Washington agrees not to
9 prosecute Defendant for any additional offenses known to it as of the time of this Plea
10 Agreement based upon evidence in its possession at this time, and that arise out of the
11 conduct giving rise to this investigation. In this regard, Defendant recognizes the United
12 States has agreed not to prosecute all of the criminal charges the evidence establishes
13 were committed by Defendant solely because of the promises made by Defendant in this
14 Plea Agreement. Defendant agrees, however, that for purposes of preparing the
15 Presentence Report, the United States Attorney's Office will provide the United States
16 Probation Office with evidence of all conduct committed by Defendant.

17 Defendant agrees that any charges to be dismissed before or at the time of
18 sentencing were substantially justified in light of the evidence available to the United
19 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
20 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
21 (1997).

22 17. **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
23 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
24 Agreement and Defendant may be prosecuted for all offenses for which the United States
25 has evidence. Defendant agrees not to oppose any steps taken by the United States to
26 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
27 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,
28

1 Defendant has waived any objection to the re-institution of any charges that previously
 2 were dismissed or any additional charges that had not been prosecuted.

3 Defendant further understands that if, after the date of this Agreement, Defendant
 4 should engage in illegal conduct, or conduct that violates any conditions of release or the
 5 conditions of confinement (examples of which include, but are not limited to, obstruction
 6 of justice, failure to appear for a court proceeding, criminal conduct while pending
 7 sentencing, and false statements to law enforcement agents, the Pretrial Services Officer,
 8 Probation Officer, or Court), the United States is free under this Plea Agreement to file
 9 additional charges against Defendant or to seek a sentence that takes such conduct into
 10 consideration by requesting the Court to apply additional adjustments or enhancements in
 11 its Sentencing Guidelines calculations in order to increase the applicable advisory
 12 Guidelines range, and/or by seeking an upward departure or variance from the calculated
 13 advisory Guidelines range. Under these circumstances, the United States is free to seek
 14 such adjustments, enhancements, departures, and/or variances even if otherwise
 15 precluded by the terms of the Plea Agreement.

16 **18. Waiver of Appellate Rights and Rights to Collateral Attacks.**

17 Defendant acknowledges that, by entering the guilty plea(s) required by this plea
 18 agreement, Defendant waives all rights to appeal from Defendant's conviction, and any
 19 pretrial rulings of the Court, and any rulings of the Court made prior to entry of the
 20 judgment of conviction. Defendant further agrees that, provided the Court imposes a
 21 custodial sentence that is within or below the Sentencing Guidelines range (or the
 22 statutory mandatory minimum, if greater than the Guidelines range) as determined by the
 23 Court at the time of sentencing, Defendant waives to the full extent of the law:

24 a. Any right conferred by Title 18, United States Code, Section 3742,
 25 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,
 26 restitution order, probation or supervised release conditions, or forfeiture order (if
 27 applicable); and
 28

b. Any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation; and

This waiver does not preclude Defendant from bringing an appropriate motion pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

If Defendant breaches this Plea Agreement at any time by appealing or collaterally attacking (except as to effectiveness of legal representation) the conviction or sentence in any way, the United States may prosecute Defendant for any counts, including those with mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

19. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into this Plea Agreement freely and voluntarily, and that no threats or promises were made to induce Defendant to enter a plea of guilty other than the promises contained in this Plea Agreement or set forth on the record at the change of plea hearing in this matter.

20. **Statute of Limitations.** In the event this Plea Agreement is not accepted by the Court for any reason, or Defendant breaches any of the terms of this Plea Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

21. **Completeness of Agreement.** The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties, except as may be set forth on the record at the change of plea hearing in this matter. This Agreement binds only the United States Attorney's Office for the Western District of

1 Washington. It does not bind any other United States Attorney's Office or any other
2 office or agency of the United States, or any state or local prosecutor.

3 Dated this 9th day of June, 2021.

4
5 s/ Leandre Gaines

6 LEANDRE GAINES

7 Defendant

8 s/ Jesse Cantor

9 JESSE CANTOR

10 Attorney for Defendant

11 s/Todd Greenberg

12 TODD GREENBERG

13 Assistant United States Attorney

14
15 s/Ye-Ting Woo

16 YE-TING WOO

17 Assistant United States Attorney
18
19
20
21
22
23
24
25
26
27
28